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Supreme Court, U.S.
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No. 08-994

**In The
Supreme Court of the United States**

PRASAD BIKKANI,

Petitioner,

v.

ROTAN E. LEE, ESQ., et al.,

Respondents.

*On Petition for Writ of Certiorari
to the Supreme Court of Ohio*

BRIEF IN OPPOSITION

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and Total Health Care Plan, Inc.*

March 4, 2009

CORPORATE DISCLOSURE
STATEMENT RULE 29.6

NorthEast Ohio Neighborhood Health Services, Inc. is an Ohio not-for-profit corporation. It is a Section 501(c)(3) tax exempt organization for federal income tax purposes. It has no parent. There is no publicly held company which owns 10% or more of its stock.

Total Health Care Plan, Inc. is an Ohio not-for-profit corporation. It is a Section 501(c)(4) tax exempt organization for federal income tax purposes. It is a wholly owned subsidiary of NorthEast Ohio Neighborhood Health Services, Inc. There is no publicly held company which owns 10% or more of its stock.

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I. RESPONDENTS

Respondent NorthEast Ohio Neighborhood Health Services, Inc. ("NEON Health Services") was formerly known as Cleveland Neighborhood Health Services, Inc. dba The Hough Norwood Clinics. NEON Health Services has been serving the medically underserved of Northern Ohio for forty years. NEON Health Services operates six community health centers in Cleveland and East Cleveland which provide primary medical and dental care to those less fortunate among us, *i.e.*, primarily Northern Ohio's Medicaid families. NEON Health Services is a non-profit, charitable 501(c)(3) organization. It is not a Johnny-come-lately to the mission of health care to the poor.

At all times relevant hereto, Total Health Care Plan, Inc. ("Total Health") was a non profit, 501(c)(4) Medicaid health maintenance organization ("HMO"), and Mr. Bikkani's employer. Total Health terminated Petitioner's information technology employment in June 1999. Total Health is no longer an operating HMO.

II. PROCEDURAL HISTORY

This case involves an out-of-control pro se litigant who has refused to comply with the trial court's Orders, the Ohio Court of Appeals' (Eighth District) Orders, the Ohio Rules of Civil Procedure, the Ohio Rules of Appellate Procedure, the Rules of Practice of the Supreme Court of Ohio, Ohio law, and, now, the Rules of the United States Supreme Court. Petitioner repeatedly has thumbed his nose at the judicial process since the day he filed his frivolous Complaint

in 2005. Ohio Courts have sanctioned him -- and he has paid -- \$17,252.21 in this litigation.

This Petition is Petitioner's attempt to appeal the Judgment Entry of the Supreme Court of Ohio in Case No. 2008-1667, dismissing and striking his Notice of Appeal and Memorandum in Support of Jurisdiction because Petitioner filed them without first obtaining leave of the Supreme Court of Ohio. See, Petitioner's Appendix A.¹ The Supreme Court of Ohio (Case No. 2006-2073) previously declared Petitioner a vexatious litigator and prohibited him from continuing or instituting any action in that Court without first obtaining leave. See, Respondents' Appendices A and B. By the time Petitioner got around to seeking leave of the Supreme Court of Ohio to institute an appeal (in Case No. 2008-1667), his appeal time had already expired.

The Petition fails to address the Supreme Court of Ohio's dismissal of his appeal. Rather, it is just a continuation of Petitioner's defamatory rant against counsel for Respondents which began four years ago in the Ohio Court of Common Pleas case of Prasad Bikkani v. Rotan E. Lee, et al, Case No. 566249. That case has spawned four years of frivolous, vexatious litigation by Petitioner at the Ohio Court of Common Pleas, the Ohio Court of Appeals (Eighth District) (three cases initiated by Petitioner), the Supreme Court of Ohio (three cases initiated by Petitioner), and

¹ In Ohio Supreme Court Case No. 2008-1667, Petitioner sought to appeal the Judgment Entry of the Ohio Court of Appeals (Eighth District) in Case No. 89312, reversing the trial court's order (in Case No. 566249) denying Respondents' Motion for Monetary Sanctions against Petitioner for frivolous conduct.

the Supreme Court of the United States (two cases initiated by Petitioner).² Petitioner's most recent Petition demonstrates, in the most graphic manner imaginable, the multiplicity of baseless, frivolous, mean-spirited, untethered-from-reality cases that Respondents and their counsel have had to endure from him for the last four years. See, Respondents' Appendix C.

Petitioner initiated the underlying lawsuit in 2005 -- for a 1999 termination of employment -- by filing a 30-page, 107-paragraph, six-count Complaint against fifteen defendants, including NEON Health Services and Total Health, seeking \$54 million in damages. The Complaint was largely incomprehensible and lodged a plethora of claims against the defendants, including fraud, Ohio RICO violations, federal and Ohio discrimination claims based upon race, sex, national origin, and age, wrongful termination, loss of consortium, and a purported shareholder's derivative action. NEON Health Services and Total Health filed various Motions to Dismiss Petitioner's claims, and the trial court dismissed all of the claims except for his Ohio employment claims. On four separate occasions, Petitioner unsuccessfully moved the trial court to disbar and disqualify counsel for Respondents. Petitioner has a history of harassing opposing counsel with motions to disqualify and disbar. This is the way that he litigates. See, Miles Landing Homeowners Ass'n v. Bikkani, 2006-Ohio-3328, 2006 WL 1781226 (8th Dist. 2006)

² The other United States Supreme Court case is Bikkani v. Lee, Case No. 07-271, cert. denied, October 29, 2007.

The trial court dismissed Petitioner's claims for a variety of reasons including the bar of the applicable statutes of limitations, lack of standing,³ and failure to comply with Ohio R. Civ. P. 9(B). The trial court subsequently dismissed Petitioner's Ohio employment claims due to his repeated discovery misconduct (e.g., failing to appear for his properly noticed deposition) and refusal to comply with the trial court's Orders to provide discovery. See, Respondents' Appendix G.

Respondents filed a Motion for Monetary Sanctions against Petitioner with the trial court, pursuant to Ohio R. Civ. P. 11 and Ohio's frivolous conduct statute, Ohio Rev. Code §2323.51. The trial court denied that Motion. On appeal, however, the Ohio Court of Appeals (Eighth District) reversed and noted that there was:

. . . [O]verwhelming evidence of egregious conduct throughout the litigation. The record clearly evidences frivolous conduct as well as an arguable basis to impose sanctions under Civ. R. 11.

* * *

The record further reveals that Bikkani filed four motions to disqualify appellees' counsel, three of which also sought to disbar attorney Fitzsimmons. Apart from the fact that the trial court has no jurisdiction to disbar appellees'

³ For example, Petitioner purported to assert a shareholder's derivative action claim without being a shareholder of either NEON Health Services or Total Health.

counsel and that Bikkani failed to provide any credible evidence or sound legal argument in support of his motions to disqualify, Bikkani filed the same motion four separate times. Notably, Bikkani's motions became more inflammatory and outrageous as the litigation progressed, accusing Fitzsimmons of a myriad of wrongdoings, including criminal conduct, fraud, and deceit. And, astonishingly, Bikkani appealed the denial of his third motion to disbar/disqualify to this court and, after his appeal was dismissed, he further sought review by the Ohio Supreme Court. Consequently, both this court and the Ohio Supreme Court awarded attorney fees to NEON and THCP for having to defend the frivolous appeals. And the Ohio Supreme Court subsequently deemed Bikkani a vexatious litigator.

Our review of the record further reveals that Bikkani blatantly disregarded the civil rules of procedure throughout the litigation, especially as they relate to discovery. Bikkani failed to provide any discovery responses despite court order to do so. He twice failed to appear for his deposition despite being duly notified. He improperly sought to obtain privileged communications from the law firm representing NEON and THCP and improperly served subpoenas throughout the litigation. Further, upon unsuccessfully moving to disqualify attorney Fitzsimmons, Bikkani filed, without leave, an amended complaint, naming Fitzsimmons as a defendant. Bikkani's conduct not only delayed the proceedings but it forced

NEON and THCP to incur additional expenses by having to respond to such misconduct.

Bikkani v. Lee, 2008-Ohio-3130, 2008 WL 2536983 (8th Dist. 2008) (attached as Petitioner's Appendix Q) (emphasis added).

Petitioner sought to appeal the decision of the Ohio Court of Appeals to the Supreme Court of Ohio, but he failed to timely seek leave to appeal and thus missed his appeal deadline. The Supreme Court of Ohio lacked jurisdiction to entertain his appeal. Petitioner now seeks review by the United States Supreme Court of the Supreme Court of Ohio's refusal to entertain his untimely appeal.

III. REASONS WHY THE PETITION SHOULD BE DENIED

THE COURT SHOULD DENY THE PRO SE PETITION FOR A WRIT OF CERTIORARI BECAUSE: (1) PETITIONER MISSED HIS APPEAL DEADLINE AT THE SUPREME COURT OF OHIO AND THUS THE SUPREME COURT OF OHIO LACKED JURISDICTION TO ENTERTAIN HIS APPEAL; (2) IT SEEKS COLLATERAL REVIEW OF CLAIMS (FROM ANOTHER APPEAL) THAT ARE BARRED BY THE DOCTRINE OF RES JUDICATA; (3) IT NOW RAISES CONSTITUTIONAL ISSUES THAT HAVE NOT BEEN PRESERVED FOR REVIEW BY THE SUPREME COURT; (4) IT FAILS TO RAISE ANY LEGAL, PROCEDURAL, OR CONSTITUTIONAL ISSUES THAT ARE SIGNIFICANT OR CUTTING-EDGE AND WHICH MERIT THE ATTENTION OF THE

**SUPREME COURT; (5) IT SEEKS REVIEW OF
A SEPARATE, WHOLLY UNRELATED OHIO
CONDOMINIUM CASE; AND (6) IT IS
INCOMPREHENSIBLE.**

The Petition for a Writ of Certiorari is, in a word, incomprehensible. Truthfully, it is beyond comprehension. It is hard to imagine a case less suitable for Supreme Court review than this one. Petitioner missed his Supreme Court of Ohio appeal deadline. The dismissal of Petitioner's shareholder's derivative action/employment discrimination/wrongful discharge claims arise out of another appeal and, in any event, those claims are now barred by the doctrine of res judicata as a result of this Court's refusal to accept Petitioner's Petition for Writ of Certiorari in another case, Bikkani v. Lee, Case No. 07-271, cert. denied, October 29, 2007. Petitioner's exotic constitutional claims have not been preserved for review. Petitioner's attempt to argue his state law condominium case (Miles Landing Homeowners Association v. Bikkani) here is baffling since that is an entirely different case involving unpaid condominium fees with different parties and different counsel. Other than the fact that the condominium case, too, is being litigated in Ohio and that Petitioner is a litigant, it bears no resemblance to the NEON Health Services and Total Health monetary sanctions case that Petitioner asks the Supreme Court to accept for review. There is nothing here that raises federal constitutional issues or important, cutting-edge legal questions worthy of consideration by this Court.

The threshold defect here is that Petitioner missed his Supreme Court of Ohio appeal deadline. This Court should not accept the Petition for a simple

reason: there is a gaping jurisdictional defect in this case. Since the Ohio Supreme Court had already declared Petitioner a vexatious litigator, it required Petitioner to obtain leave before filing another case at the Ohio Supreme Court. See, Respondents' Appendix B. When Petitioner filed his Notice of Appeal and Memorandum in Support of Jurisdiction, he failed to seek leave of the Ohio Supreme Court to do so. For that reason, the Ohio Supreme Court rejected Petitioner's appeal. See, Petitioner's Appendix A. When Petitioner got around to seeking leave of the Ohio Supreme Court to try to institute an appeal, his appeal time had already expired. Thus, the Ohio Supreme Court had no jurisdiction to entertain the appeal. Given this jurisdictional defect, the United States Supreme Court should not accept this Petition for review. What would be the point of accepting the Petition and considering a possible reversal and remand to the Ohio Supreme Court on a case that the Ohio Supreme Court had no jurisdiction to hear in the first place?

Oddly, the bulk of this Petition is devoted to Petitioner's efforts to reargue and collaterally resurrect shareholder's derivative action/employment discrimination/wrongful discharge claims from another appeal. Those claims are now res judicata due to this Court's refusal to accept another of Petitioner's Petitions for review in Bikkani v. Lee, Case No. 07-271, cert. denied, October 29, 2007. Those substantive claims from another appeal are not part of the case that Petitioner now asks this Court to accept for review. Further, Petitioner's Appendices consist largely of unauthenticated letters and memoranda relating to these alleged claims. Obviously, the Supreme Court cannot rely on this type of

unauthenticated and unsubstantiated "stuff" as grounds for accepting the case for review.

Even more oddly, a good part of this Petition is devoted to Petitioner's efforts to right perceived wrongs in his wholly unrelated condominium case with the Miles Landing Homeowners Association, not with any issues he has with Respondents. Even if Petitioner could bring his condominium fee problems to the United States Supreme Court through the vehicle of this Petition -- which he plainly cannot do -- the condominium case raises pure issues of Ohio state condominium law -- not federal constitutional issues.

Ohio Courts -- and the Respondents -- have been burdened enough by pro se Petitioner's frivolous filings. It makes no sense to give pro se Petitioner another stage so that he can extend his frivolity to the United States Supreme Court. The Supreme Court of Ohio, the Ohio Court of Appeals (Eighth District), and the Cuyahoga County Court of Common Pleas all have sanctioned pro se Petitioner for his frivolous filings, his failure to comply with court orders, and his failure to comply with the Rules of Court. See, Respondents' Appendices D-G. In addition to imposing monetary sanctions on pro se Petitioner, the Supreme Court of Ohio classified him as a vexatious litigator and prohibited him from continuing or instituting any legal proceeding in the Supreme Court of Ohio without first obtaining leave of the Supreme Court of Ohio. See, Respondents' Appendix B. That is the reason why pro se Petitioner is now knocking on the door of the United States Supreme Court.

The fact that pro se Petitioner is continuing to pursue this frivolous course of conduct in the United

States Supreme Court -- even after being classified a vexatious litigator by Ohio's highest court -- speaks for itself. NEON Health Services and Total Health submit that the Supreme Court should not indulge pro se Petitioner's Petition to file more frivolous papers that waste the valuable time and resources of the Supreme Court -- not to mention the valuable time and resources of the Respondents.

Petitioner's failure to follow Rules of the United States Supreme Court is yet another reason why the Court should not accept this case for review. The Clerk's Office initially rejected his original Petition in this case for a plethora of Rules infractions. See, Respondents' Appendix H. The Clerk's Office gave Petitioner two extra months to correct the "housekeeping" deficiencies in his original Petition. The Clerk's Office's December 2, 2008 letter to Petitioner unequivocally provided:

When making the required corrections to a petition, no change to the substance of the petition may be made.

On or about February 2, 2009, Petitioner filed his revised Petition for a Writ of Certiorari. Petitioner did more than merely correct the "housekeeping" deficiencies pointed out in the Clerk's December 2nd letter. He took the opportunity of an extra two months to file a substantively different Petition. The following summary highlights some of the substantive changes to his second Petition:

Petitioner added cases which were not in his original Petition: Disciplinary Counsel v. Jones

(on p. 28) and In Re: J.M. Capital Ltd. (on p. 12).

He added a law review article citation (on p. 26).

Most of page 1 is new text.

All of the underlined text on page 12 has been added to the Petition.

Substantial substantive material has been deleted from pages 2, 3, 4, 5, 6, 9, 13, and 16.

Substantive material has been added, among others, at pages 3 and 5.

See, Respondents' Appendix I.

Petitioner's abject failure to follow the Rules of the United States Supreme Court is yet another reason to deny the Petition. The Rules apply to everyone -- or they apply to no one. They certainly ought to apply to Petitioner. Against the background of Petitioner's failure to follow the Clerk's instructions about bringing his Petition into compliance with the Rules of the Supreme Court, it is not at all clear why the Clerk's Office accepted the non-complying second Petition for filing. See, Respondents' Appendix I.

IV. CONCLUSION

It is impossible to discern what Petitioner is asking the United States Supreme Court to do in the unthinkable event that the Court were to accept this case for review. If the Supreme Court were to accept the case for review, what would be the principle of law

that the Court would articulate in its decision? What relief would the Court give? More to the point, in light of the jurisdictional defect at the Supreme Court of Ohio, what relief could the Court give here? The facts that Petitioner cannot find a lawyer to represent him here and that he has been sanctioned \$17,252.21 by the Ohio Court of Appeals and the Ohio Supreme Court speak volumes about the lack of factual, legal, procedural, and constitutional merit to this purported appeal. To paraphrase -- and with apologies to -- William Congreve, "Hell hath no greater fury than an employee terminated."⁴

For all the foregoing reasons, therefore, NEON Health Services and Total Health urge the Court, in the strongest terms possible, to deny the Petition for a Writ of Certiorari.

⁴ William Congreve, The Mourning Bride, Act III, Scene 2 (1697).

Respectfully submitted,

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APPENDIX

APPENDIX A

THE SUPREME COURT OF OHIO

Case No. 2006-2073

[Filed February 28, 2007]

Prasad Bikkani)
)
v.)
)
Rotan E. Lee, Esq., et al.)
)

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question. Upon consideration of the motion of Matthew T. Fitzsimmons, Esq., to remove himself as a personally named defendant-appellee, the motion of Northeast Ohio Neighborhood Health Services, Inc., et al., to strike memo opposing the motion to remove Matthew Fitzsimmons as a personally named defendant-appellee, and appellees' motions to have pro-se appellant classified as a vexatious litigator and for sanctions for frivolous action,

It is ordered by the Court that the motion to remove Matthew T. Fitzsimmons as a personally

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named defendant-appellee and the motion of Northeast Ohio Neighborhood Health Services, Inc., et al., to strike memo opposing the motion to remove Matthew T. Fitzimmons as a personally named defendant-appellee are granted, and the motions to classify appellant as a vexatious litigator and for sanctions for frivolous action are granted.

(Cuyahoga County Court of Appeals; No. 88650)

/s/

THOMAS J. MOYER
Chief Justice

APPENDIX B

THE SUPREME COURT OF OHIO

Case No. 2006-2073

[Filed March 5, 2007]

<hr/> Prasad Bikkani)
)
v.)
)
Rotan E. Lee, Esq., et al.)
<hr/>)

ENTRY

This cause came on for further consideration upon the February 28, 2007 entry finding appellant to be a vexatious litigator under S.Ct.Prac.R. XIV(5)(B), and upon the sanctions granted for frivolous action. Upon consideration thereof,

It is ordered by the Court that Prasad Bikkani is prohibited from continuing or instituting legal proceedings in this Court without first obtaining leave. Any request for leave shall be submitted to the Clerk of this Court for the Court's review.

It is further ordered that appellees shall file a bill and documentation of reasonable expenses within twenty days of the date of this entry. Appellant may file objections to appellees' bill and documentation

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within ten days of the filing of the bill and documentation, and appellees may file a reply to appellant's objections, if any, within five days of the filing of the objections.

(Cuyahoga County Court of Appeals; No. 88650)

/s/
THOMAS J. MOYER
Chief Justice

APPENDIX C

**EXECUTIVE SUMMARY OF BIKKANI
CASES AS OF FEBRUARY 20, 2009**

**1. Prasad Bikkani v. Rotan E. Lee, Esq., et al.,
Case No. CV-05-566249, Cuyahoga County
Court of Common Pleas (J. Matia)**

- The Court dismissed Bikkani's fraud, Ohio RICO, federal employment, loss of consortium, and shareholder derivative action claims due to the bar of the applicable statutes of limitations, lack of standing, and failure to comply with Ohio R. Civ. P. 9(B).
- The Court dismissed Bikkani's Ohio employment claims due to Bikkani's repeated discovery misconduct, failure to appear for his deposition, and refusal to comply with the Court's orders to provide discovery.
- The Court denied Bikkani's four motions to disqualify and disbar NEON and THCP's attorney, Matthew T. Fitzsimmons.
- A hearing on NEON'S and THCP's Motion for Sanctions against Bikkani for frivolous conduct was set for December 22, 2008. The hearing was continued until January 27, 2009. Bikkani moved to continue the January 27th monetary sanctions hearing, ostensibly for health reasons.

The monetary sanctions hearing was continued until April 30, 2009.

2. Prasad Bikkani v. Rotan E. Lee, Esq., et al., Case No. CA-06-088650, Eighth District Court of Appeals

- Bikkani sought to appeal the trial court's Order denying his third Motion to Disqualify Attorney Fitzsimmons (in Common Pleas Court Case No. 566249).
- The Eighth District dismissed the appeal, sua sponte, for lack of a final appealable order.
- The Eighth District sanctioned Bikkani for filing the frivolous appeal and ordered him to pay NEON \$1,400 and THCP \$1,360.

3. Prasad Bikkani v. Rotan E. Lee, Esq., et al., Case No. 2006-2073, Supreme Court of Ohio

- Bikkani sought to appeal the Eighth District's Judgment Entry (in Court of Appeals Case No. CA-06-088650) dismissing, for lack of a final appealable order, his appeal of the trial court's Order denying his third Motion to Disqualify Attorney Fitzsimmons.
- The Supreme Court declined to accept jurisdiction, dismissed the appeal, removed attorney Fitzsimmons as a personally named defendant-appellee, determined that the appeal was frivolous, sanctioned Prasad Bikkani \$7,616.03 for filing it, and classified Prasad Bikkani as a vexatious litigator.

**4. Prasad Bikkani v. Rotan E. Lee, Esq., et al.,
Case No. 2006-2302, Supreme Court of Ohio**

- Bikkani sought to appeal the Eighth District's Orders sanctioning him for filing the frivolous appeal (in Court of Appeals Case No. CA-06-088650) and denying his request to strike certain filings.
- The Supreme Court declined to accept jurisdiction, dismissed the appeal, removed attorney Fitzsimmons as a personally named defendant-appellee, determined that the appeal was frivolous, and sanctioned Prasad Bikkani \$6,864.18 for filing it.

**5. Prasad Bikkani v. Rotan E. Lee, Esq., et al.,
Case No. CA-07-089269, Eighth District Court
of Appeals**

- The Eighth District dismissed the untimely appeal (in Common Pleas Court Case No. 566249), sua sponte, for lack of a final appealable order.

**6. Stanley E. Stein, Receiver for Miles Landing
Homeowners Association v. Prasad Bikkani, et
al., Case No. 07 CVF 370, Rocky River
Municipal Court / Case No. 1:07CV1132 United
States District Court for the Northern District
of Ohio (remanded to Rocky River Municipal
Court for lack of federal jurisdiction)**

- Receiver sought to collect \$10,332.72 from Prasad Bikkani and Vijaya Bikkani for past due condominium maintenance fees. The Bikkanis,

appearing pro se, wrongfully removed the case to federal court and filed a Third-party Complaint against NEON, THCP, and Attorney Fitzsimmons.

- The Bikkaniis voluntarily dismissed the frivolous Third-Party Complaint, with prejudice, against NEON and THCP after retaining an attorney.

7. Prasad Bikkani v. Rotan E. Lee, Esq., et al., Case No. 07-271, Supreme Court of the United States

- Bikkani filed a Petition for a Writ of Certiorari with the United States Supreme Court with regard to the Order of the Supreme Court of Ohio in Case No. 2006-2302 declining to accept jurisdiction and dismissing the appeal. NEON and THCP filed a Brief in Opposition. On October 29, 2007, the United States Supreme Court denied the Petition.

8. WM Specialty Mortgage LLC v. Prasad and Vijaya Bikkani, Case No. CV-07-620252, Cuyahoga County Common Pleas Court

- Mortgage foreclosure filed by Bikkani's lender. NEON named as a nominal defendant because it had a judgment lien against the Bikkani property. Since the Bikkaniis satisfied the judgment, NEON removed the lien. Thus, NEON has not been an active litigant in the case.

9. **Prasad Bikkani, Plaintiff-Appellee v. Rotan E. Lee, et al.**, (NorthEast Ohio Neighborhood Health Services, Inc. and Total Health Care Plan, Inc.) Defendants-Appellants, Case No. CA-06-089312, Ohio Court of Appeals, Eighth Appellate District, Cuyahoga County

- This is NEON'S and THCP's appeal of the trial court's denial of their Motion for Monetary Sanctions in Common Pleas Court Case No. 566249. Although the trial court dismissed all of Bikkani's claims with prejudice, the trial court did not award NEON and THCP claimed attorneys' fees in the amount of \$61,592.85 and expenses in the amount of \$3,140.47.
- On June 26, 2008, the Court of Appeals reversed the trial court's decision denying sanctions to NEON and THCP.

10. **Prasad Bikkani v. Rotan E. Lee, Esq., et al.**, Case No. 2008-1667, Supreme Court of Ohio

- Bikkani sought to appeal the Eighth District's June 26, 2008. Decision (in Court of Appeals Case No. 089312) reversing the trial court's denial of NEON'S and THCP's Motion for Monetary Sanctions (in Common Pleas Case No. 566249) against Bikkani.
- On August 26, 2008, the Supreme Court of Ohio dismissed the appeal sua sponte because Bikkani, whom the Supreme Court had previously designated a vexatious litigator, failed to seek leave of the Supreme Court to file a new appeal. On September 12, 2008, the

Supreme Court denied Bikkani's Motion for Leave to File a Motion for Reconsideration of the August 26, 2008 Entry of Dismissal.

11. **NorthEast Ohio Neighborhood Health Services, Inc. and Total Health Care Plan, Inc. v. Prasad and Vijaya Bikkani, Case No. CV-07-628928, Cuyahoga County Common Pleas Court**

- This is NEON'S and THCP's lawsuit to have the Bikkanis declared vexatious litigators.
- The case was previously set for trial on September 29, 2008, but the Bikkanis delayed the trial by filing an improper Notice of Appeal two business days before the trial was scheduled to start. The trial was rescheduled for February 4, 2009. Bikkani moved to continue the February 4th trial date, ostensibly for health reasons. The trial was continued until June 1, 2009.

12. **NorthEast Ohio Neighborhood Health Services, Inc. and Total Health Care Plan, Inc. v. Prasad and Vijaya Bikkani, Case No. CA 08 092134, Ohio Court of Appeals, Eighth Appellate District, Cuyahoga County**

- Two business days before the trial was scheduled to start in NEON'S and THCP's lawsuit to have the Bikkanis declared vexatious litigators, the Bikkanis filed a Notice of Appeal in regard to the trial court's order striking the Bikkanis' improper jury demand.

- The Eighth District dismissed the appeal, sua sponte, for lack of a final appealable order a few days after Bikkani filed the Notice of Appeal.
13. **Prasad Bikkani v. Rotan E. Lee, Esq., et al.,**
Case No. 08-994, Supreme Court of the
United States
- In November 2008, Bikkani attempted to file a Petition for a Writ of Certiorari with the United States Supreme Court with regard to the Order of the Supreme Court of Ohio dismissing the appeal in Case No. 2008-1667.
 - In December 2008, the United States Supreme Court rejected Bikkani's cert. petition for failure to comply with the U.S. Supreme Court's Rules of Practice. On February 2, 2009, Bikkani filed another cert. petition. The U.S. Supreme Court has not yet ruled on this cert. petition.

APPENDIX D

THE SUPREME COURT OF OHIO

Case No. 2006-2073

[Filed May 16, 2007]

Prasad Bikkani)
)
v.)
)
Rotan E. Lee, Esq., et al.)

ENTRY

This cause came on for consideration of the bill and documentation for attorneys' fees, costs, and expenses filed by appellees Northeast Ohio Neighborhood Health Services, Inc., and Total Health, and appellant's objections to the bill and documentation.

It is ordered by the Court that attorneys' fees and expenses in the amount of \$7,616.03 are awarded.

Upon consideration of the motion of Northeast Ohio Neighborhood Health Services, Inc., and Total Health to strike objections to bill and documentation,

It is ordered by the Court that the motion to strike objections to bill and documentation is denied as moot.

13b

(Cuyahoga County Court of Appeals; No. 88650)

/s/

THOMAS J. MOYER
Chief Justice

APPENDIX E

THE SUPREME COURT OF OHIO

Case No. 2006-2302

[Filed July 25, 2007]

Prasad Bikkani)
)
v.)
)
Rotan E. Lee, Esq., et al.)
)

ENTRY

This cause is came on for further consideration upon the filing of bill and documentation for attorneys' fees, costs and expenses per Court's 5/16/07 entry by Northeast Ohio Neighborhood Health Services, Inc., and Total Health Care Plan, Inc., and appellant's objections to bill and documentation in support of attorneys' fees,

It is ordered by the Court that attorneys' fees and expenses in the amount of \$6,864.18 are awarded to appellees. Objections to bill and document in support of attorneys' fees are denied. The Clerk of this Court shall issue a certificate of judgment.

(Cuyahoga County Court of Appeals; No. 88650)

15b

/s/

THOMAS J. MOYER
Chief Justice

APPENDIX F

**COURT OF APPEALS OF OHIO,
EIGHTH DISTRICT
County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts**

**COA NO. 88650
LOWER COURT NO. CP CV-566249**

Date 10/30/06

<hr/> PRASAD BIKKANI)
)
Appellant)
)
-vs-)
)
ROTAN E. LEE, ESQ., ET AL.)
)
Appellee)
<hr/>)

**COMMON PLEAS COURT
MOTION NO. 389256**

Journal Entry

Motion by Appellees, Northeast Ohio Neighborhood Health Services, Inc. and Total Health Care Plan, Inc., for Sanctions, Including Attorneys' Fees, Costs and Expenses is granted in part pursuant to App. R. 23 and upon review of the trial court file and the

pleadings filed in this appeal, the Court determines that the appeal was frivolous. The Court also reviewed the requested attorney fees and costs associated with appellees' pleadings filed in response to appellant's appeal and orders Appellant Prasad Bikkani to pay Appellee Total Health Care Plan, Inc. the sum of \$1,360.00 and Appellee Northeast Ohio Neighborhood Health Services, Inc. the sum of \$1,400.00 as and for reasonable attorneys fees and the \$12.00 in costs expended in the appeal.

Adm. Judge, ANN DYKE, Concur

/s/

Judge PATRICIA A. BLACKMON

APPENDIX G

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

Case No: CV-05-566249

[Filed October 3, 2006]

<hr/> PRASAD BIKKANI)
Plaintiff)
)
ROTAN E LEE ESQ. ET AL.)
Defendant)
<hr/>)

Judge: DAVID T MATIA

JOURNAL ENTRY

96 DISP. OTHER - FINAL

Upon consideration of Defendants' (North East Ohio Neighborhood Health Services and Total Health Care Plan Inc) Motion to Dismiss the Complaint with Prejudice Due to Plaintiff's failure to appear at his properly noticed deposition (filed 08/14/2006) which motion Defendants Frank Kimber and Dr. Brenda Stevenson Marshall joined in on 8/23/06, Defendants' (North East Ohio Neighborhood Health Services and Total Health Care Plan Inc) motion to dismiss the complaint with prejudice for plaintiffs failure to comply with the court's orders to respond to discovery

or face dismissal with prejudice (filed 09/08/2006) which motion defendants Frank Kimber and Dr. Brenda Stevenson Marshall joined in on 9/12/06 and which motion defendant Ruth Aaron joined in on 9/18/06, and plaintiff's repeated failure to comply with this court's orders, complaint as to all claims and as to all defendants.

Costs to Plaintiff.

Since plaintiff's complaint has been dismissed with prejudice, defendant North East Ohio Neighborhood Health Services, Inc.'s Motion for Summary Judgment (Filed 09/18/2006) is moot.

Since plaintiff's complaint has been dismissed with prejudice, Defendant Total Health Care Plan Inc.'s Motion for Summary Judgment (filed 09/18/2006) is moot.

FINAL

Court Cost Assessed as Directed.

<u>/s/</u>	<u>10-3-06</u>
Judge Signature	Date

APPENDIX H

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

December 2, 2008

Prasad Bikkani
3043 Forestlake Drive
Westlake, OH 44145

RE: Bikkani v. Lee, et al.
OHSC No. 2008-1667

Dear Mr. Bikkani:

Returned are 39 copies of a petition for a writ of certiorari in the above-entitled case postmarked on November 28, 2008 and received on December 2, 2008, which fails to comply with the Rules of this Court.

Rule 33.1(c) prohibits the use of spiral, plastic, metal or string bindings. Staples may be used, at least two, along the left margin covered with tape.

The text of the petition and appendix must be typeset in a Century family (e.g., Century Expanded, New Century Schoolbook, or Century Schoolbook) 12-point type with 2-point or more leading between lines. The typeface of footnotes must be 10-point or larger with 2-point or more leading between lines. Rule 33.1(b).

The questions presented for review must be followed by the list of parties (if all do not appear on the cover), corporate disclosure statement (if applicable), table of contents, table of authorities, citations of the official and unofficial reports of opinions and orders entered in the case, statement of the basis for jurisdiction, constitutional provisions, treaties, etc., statement of the case, reasons for granting the writ, and the appendix. Rule 14.1.

The pages containing the questions presented for review through table of authorities should be numbered (i), (ii), (iii), etc. The following pages should be numbered 1, 2, 3, etc.

The order(s) of the Court of Appeals of Ohio, case number 89312, entered on June 26, 2008 and any relevant orders entered by the Cuyahoga County Court of Common pleas in case number CV-566249 must be included in the appendix. Rule 14.1 (i). Each order must be reproduced so that it complies with Rule 33.1.

You must submit a certificate stating that the petition complies with the word limitation. The certificate must state the number of words in the document and must be separate from the petition. Rule 33.1(h). If the certificate is signed by a person other than a member of the Bar of this Court, the counsel of record, or the unrepresented party, it must contain a notarized affidavit or declaration in compliance with 28 USC 1746.

Kindly correct the petition and appendix so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this

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Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

This office shall retain one copy of the petition and your check in the amount of \$300.00 in expectation of timely receipt of a properly prepared petition.

Enclosed are a copy of the Rules of the Court and memorandum concerning the preparation of a paid petition in booklet format.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
William K. Suter, Clerk
By:

Heather Trant
(202) 479-3039

Enclosures
cc: Matthew T. Fitzsimmons

APPENDIX I

Nicola, Gudbranson & Cooper, LLC
Celebrating 75 Years

Attorneys and Counselors at Law
Landmark Office Towers
Republic Building, Suite 1400
25 West Prospect Avenue
Cleveland, OH 44115

Phone: 216-621-7227
Fax: 216-521-3999
Website: www.nicola.com

[Firm Letterhead and Attorneys omitted here]

February 10, 2009

Direct email: fitzsimmons@nicola.com

Via Federal Express

Ms. Heather Trant
Supreme Court of the United States
1 First Street, N.E.
Office of the Clerk
Washington D.C. 20543

Re: Bikkani v. Lee, Case No. 08-994

Dear Ms. Trant:

I am counsel for respondents NorthEast Ohio Neighborhood Health Services, Inc. ("NEON") and Total Health Care Plan, Inc. ("THCP"), as I was in Case No. 07-271. NEON and THCP are both Ohio non-profit organizations.

Your December 2, 2008 letter to Mr. Bikkani unequivocally stated:

"When making the required corrections to a petition, no change to the substance of the petition may be made."

On or about February 2, 2009, Mr. Bikkani filed his second Petition for a Writ of Certiorari in this case. Mr. Bikkani did more than merely correct the "housekeeping" deficiencies you pointed out in your December 2nd letter. He took the opportunity of an extra two months to file a substantively different Petition. The following summary highlights some of the substantive changes to his second Petition:

He has added cases which were not in his original Petition: Disciplinary Counsel v. Jones (on page 28) and In Re: J.M. Capital Ltd. (on page 12). He also added a law review article citation (on page 26). Most of page 1 is new text.

All of the underlined text on page 12 has been added to the Petition.

Substantial substantive material has been deleted from pages 2, 3, 4, 5, 6, 9, 13, and 16.

Substantive material has been added, among others, at pages 3 and 5.

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For these reasons, the Court should reject, or dismiss, the Petition. My clients should not have to incur the substantial expense (attorneys' fees and printing) of pointing out these serious deficiencies in a Brief in Opposition due to Petitioner's abject failure to comply with the instructions of the Clerk's Office.

Sincerely,

/s/

Matthew T. Fitzsimmons

MTF/rgg

cc: Mr. Prasad Bikkani

APPENDIX J

Ohio R. Civ. R. P 11, Signing of pleadings, motions, or other documents

Every pleading, motion, or other document of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address, attorney registration number, telephone number, telefax number, if any, and business e-mail address, if any, shall be stated. A party who is not represented by an attorney shall sign the pleading, motion, or other document and state the party's address. Except when otherwise specifically provided by these rules, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. Similar action may be taken if scandalous or indecent matter is inserted.

APPENDIX K

Ohio Rev. Code § 2323.51, Definitions; award of attorney's fees as sanction for frivolous conduct

(A) As used in this section:

(1) "Conduct" means any of the following:

(a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action;

(b) The filing by an inmate of a civil action or appeal against a government entity or employee, the assertion of a claim, defense or other position in connection with a civil action of that nature or the assertion of issues of law in an appeal of that nature, or the taking of any other action in connection with a civil action or appeal of that nature.

(2) "Frivolous conduct" means either of the following:

(a) Conduct of an inmate or other party to a civil action, of an inmate who has filed an appeal of the type described in division (A)(1)(b) of this section, or of the inmate's or other party's counsel of record that satisfies any of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

(b) An inmate's commencement of a civil action or appeal against a government entity or employee when any of the following applies:

(i) The claim that is the basis of the civil action fails to state a claim or the issues of law that are the basis of the appeal fail to state any issues of law.

(ii) It is clear that the inmate cannot prove material facts in support of the claim that is the basis of the civil action or in support of the issues of law that are the basis of the appeal.

(iii) The claim that is the basis of the civil action is substantially similar to a claim in a previous civil action commenced by the inmate or the issues of law that are the basis of the appeal are substantially similar to issues of law raised in a previous appeal commenced by the inmate, in that the claim that is the basis of the current civil action or the issues of law that are the basis of the current appeal involve the same parties or arise from the same operative facts as the claim or issues of law in the previous civil action or appeal.

(3) "Civil action or appeal against a government entity or employee," "inmate," "political subdivision," and "employee" have the same meanings as in section 2969.21 of the Revised Code.

(4) "Reasonable attorney's fees" or "attorney's fees," when used in relation to a civil action or appeal against a government entity or employee, includes both of the following, as applicable:

(a) The approximate amount of the compensation, and the fringe benefits, if any, of the attorney general, an assistant attorney general, or special counsel appointed by the attorney general that has been or will be paid by the state in connection with the legal services that were rendered by the attorney general, assistant attorney general, or special counsel in the civil action or appeal against the government entity or employee, including, but not limited to, a civil action or appeal commenced pro se by an inmate, and that were necessitated by frivolous conduct of an inmate represented by counsel of record, the counsel of record of an inmate, or a pro se inmate.

(b) The approximate amount of the compensation, and the fringe benefits, if any, of a prosecuting attorney or other chief legal officer of a political subdivision, or an assistant to a chief legal officer of those natures, who has been or will be paid by a political subdivision in connection with the legal services that were rendered by the chief legal officer or assistant in the civil action or appeal against the government entity or employee, including, but not limited to, a civil action or appeal commenced pro se by an inmate, and that were necessitated by frivolous conduct of an inmate represented by counsel of record, the counsel of record of an inmate, or a pro se inmate.

(5) "State" has the same meaning as in section 2743.01 of the Revised Code.

(6) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code.

(B)(1) Subject to divisions (B)(2) and (3), (C), and (D) of this section and except as otherwise provided in division (E)(2)(b) of section 101.15 or division (1)(2)(b) of section 121.22 of the Revised Code, at any time not more than thirty days after the entry of final judgment in a civil action or appeal, any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal. The court may assess and make an award to any party to the civil action or appeal who was adversely affected by frivolous conduct, as provided in division (B)(4) of this section.

(2) An award may be made pursuant to division (B)(4) of this section upon the motion of a party to a civil

action or an appeal of the type described in that division or on the court's own initiative, but only after the court does all of the following:

(a) Sets a date for a hearing to be conducted in accordance with division (B)(2)(c) of this section, to determine whether particular conduct was frivolous, to determine, if the conduct was frivolous, whether any party was adversely affected by it, and to determine, if an award is to be made, the amount of that award;

(b) Gives notice of the date of the hearing described in division (B)(2)(a) of this section to each party or counsel of record who allegedly engaged in frivolous conduct and to each party who allegedly was adversely affected by frivolous conduct;

(c) Conducts the hearing described in division (B)(2)(a) of this section in accordance with this division, allows the parties and counsel of record involved to present any relevant evidence at the hearing, including evidence of the type described in division (B)(5) of this section, determines that the conduct involved was frivolous and that a party was adversely affected by it, and then determines the amount of the award to be made. If any party or counsel of record who allegedly engaged in or allegedly was adversely affected by frivolous conduct is confined in a state correctional institution or in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, the court, if practicable, may hold the hearing by telephone or, in the alternative, at the institution, jail, or workhouse in which the party or counsel is confined.

(3) The amount of an award made pursuant to division (B)(1) of this section that represents reasonable attorney's fees shall not exceed, and may be equal to or less than, whichever of the following is applicable:

(a) If the party is being represented on a contingent fee basis, an amount that corresponds to reasonable fees that would have been charged for legal services had the party been represented on an hourly fee basis or another basis other than a contingent fee basis;

(b) In all situations other than that described in division (B)(3)(a) of this section, the attorney's fees that were reasonably incurred by a party.

(4) An award made pursuant to division (B)(1) of this section may be made against a party, the party's counsel of record, or both.

(5)(a) In connection with the hearing described in division (B)(2)(a) of this section, each party who may be awarded reasonable attorney's fees and the party's counsel of record may submit to the court or be ordered by the court to submit to it, for consideration in determining the amount of the reasonable attorney's fees, an itemized list or other evidence of the legal services rendered, the time expended in rendering the services, and whichever of the following is applicable:

(i) If the party is being represented by that counsel on a contingent fee basis, the reasonable attorney's fees that would have been associated with those services had the party been represented by that counsel on an hourly fee basis or another basis other than a contingent fee basis;

(ii) In all situations other than those described in division (B)(5)(a)(i) of this section, the attorney's fees associated with those services.

(b) In connection with the hearing described in division (B)(2)(a) of this section, each party who may be awarded court costs and other reasonable expenses incurred in connection with the civil action or appeal may submit to the court or be ordered by the court to submit to it, for consideration in determining the amount of the costs and expenses, an itemized list or other evidence of the costs and expenses that were incurred in connection with that action or appeal and that were necessitated by the frivolous conduct, including, but not limited to, expert witness fees and expenses associated with discovery.

(C) An award of reasonable attorney's fees under this section does not affect or determine the amount of or the manner of computation of attorney's fees as between an attorney and the attorney's client.

(D) This section does not affect or limit the application of any provision of the Rules of Civil Procedure, the Rules of Appellate Procedure, or another court rule or section of the Revised Code to the extent that the provision prohibits an award of court costs, attorney's fees, or other expenses incurred in connection with a particular civil action or appeal or authorizes an award of court costs, attorney's fees, or other expenses incurred in connection with a particular civil action or appeal in a specified manner, generally, or subject to limitations.

REPLY BRIEF

23

(3)

No: 08-994

Supreme Court, U.S.
FILED

MAR 16 2009

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED
STATES

Prasad Bikkani ---Petitioner

v.

Rotan E Lee

North East Ohio Neighborhood Health Services
(NEON)

Total Health care Plan, Inc (THCP)

Scheur Management Group (SMG), Barry Scheur,
Robert McMillan, Robert Eichler, and Jimmy Dee
Ruth Aaron

Brenda Stevens Marshall and Frank Kimber

Moreno Miller

Paula Phelps

Arnold Pinkney/Beptin & Associates Inc

Joseph Davis

Matthew T. Fitzsimmons

Respondents

On Petition For Writ Of Certiorari
To The Court of Ohio Supreme Court
Case No. 2008-1667

REPLY BRIEF IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI

Prasad Bikkani, **Pro Se** (Attorney Breen is
not registered with US Supreme Court; looking
forward to the court appointed attorney for
the US Supreme Court) , Prasadbabu@aol.com

3043 Forestlake Dr

Westlake, OH 44145 (440) 808-1259

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I. Introduction

Attorney Matthew Fitzsimmons who is representing North East Ohio Health Services (NEON) and Total Health Care Plan Inc (THCP) is a Board of Trustee of NEON, and about 16 conflicting parties as briefed in the certiorari. The instant case involved with Constitution Due process and Federal Supremacy laws. In the Brief in opposition, page 1 through 12, trustee cum attorney Fitzsimmons could not deny his wrong doings nor did he able to support how and why he is continuing in the cases with his pecuniary benefits, violating constitution, continue misrepresenting the facts to the courts, state and federal organizations/representatives.

As detailed in the petition for certiorari, Trustee cum attorney Fitzsimmons used MLHOA case for his purpose to declare petitioner as if vexatious in Ohio Supreme Court yet he claimed in the opposition Brief as the outcome is unrelated. Mr. Fitzsimmons even caused MLHOA to file a duplicate frivolous claim in his wife's Rocky River court in early 2007, and he himself filed a separate case in Cuyahoga County Common Pleas Court using NEON/THCP as his clients with his IRC 4941(d) self-dealing purpose to declare Petitioner and his wife to be declared as if vexatious litigants. In late August 2007, his wife recused herself as a judge under 28 U. S. C. § 455 circumstances from the Rocky River case. How far a pecuniary benefit involved trustee cum attorney tilts law to his own purpose? Is it a legal standard to represent parties in a case/court where spouse is a judge, to cause judge to be recused? There is no doubt that it involves more than that and trustee cum attorney Fitzsimmons does not bound to any law, unfortunately. As detailed to some extent in the certiorari, Trustee cum attorney Fitzsimmons materially misrepresenting the facts from one court to the other court, representing NEON/THCP with severe conflicts of interests and with his pecuniary benefits ahead. Trustee cum attorney could not influence

this honorable court against the facts of certiorari appendix thus he simply stated as if the cited letters are not verified for authentic. The trustee cum attorney, who is representing with severe conflicts over a dozen clients couldn't tell which letter he does not have in his possession or non-authentic or whose interests he is representing. On page 3 of his opposition, Mr. Fitzsimmons stated as if certain charges are against 15 defendants including NEON/THCP and without stating those charges are against other defendants and without disclosing that Mr. Fitzsimmons representing other defendants and his self-interests but under the name of NEON/THCP. Just to confuse this honorable court, Mr. Fitzsimmons even cited a MLHOA case repeatedly on page 3 and other pages as he did in other court cases by twisting the facts. Mr. Fitzsimmons knew that Federal supremacy laws were violated in MLHOA case and a fraud was involved; yet when the petitioner cited such reference in the certiorari, he blamed as if it is an unrelated case and as if a certiorari to be denied, point 5 on page 7 of his opposition. As detailed in the certiorari, Attorney Fitzsimmons got rewarded continuously for concealing the facts, converting THCP into NEON and got rewarded for hundreds of counts of professional misconduct and for wrongdoing through bill/sanctions against innocent victim/Petitioner. Without an opportunity to bring a sound appealable order to court's jurisdiction against wrongdoers, many more victims will suffer. Unlike, trustee cum attorney Fitzsimmons eluded this honorable court on p6 of his opposition to deny the petition, petitioners attorney Kevin Breen timely filed Ohio Supreme Court appeal. The issues raised in the petition are not barred by Res Judicata and continued acts associated with trustee cum attorney Fitzsimmons, NEON/THCP too, the constitutional issues were preserved, the certiorari raises significant or current-edge and which merit the attention of this honorable court.

II. Reasons for granting the writ of Certiorari

Trustee Cum attorney Matthew Fitzsimmons continued to violate laws and ethics of the court, and abusing the court system in an effort to his pecuniary benefit. As detailed in the certiorari, Trustee cum attorney Fitzsimmons continue to represent with the forbidden self-dealings, severe conflicts, violation of IRC 4941(d) and did not deny those violations and the violations of constitutional amendments. As detailed in the certiorari, with Mr. Fitzsimmons's pecuniary benefit, he is controlling NEON/THCP non-profit corporations as if those are his clients, violated basic judiciary system, and continues to influence the court system to declare the innocent victim as a vexatious litigant. This case should not be a precedent to make other innocent people as victims and too in the hands of a pecuniary benefit involved attorney who supposed to safeguard the judiciary system.

Irrespective of how a pecuniary interest and severe conflicts involved with Mr. Fitzsimmons, trustee cum attorney Fitzsimmons mis-characterized facts from page 1 through 10 in his opposition, the petitioner's certiorari supports the facts, and Mr. Fitzsimmons didn't deny those facts. On page 10, 11 and in other pages of opposition Brief, Mr. Fitzsimmons indicated as if the petitioner reduced material from the original certiorari petitioner is not intended to violate any rule other than to maintain the size of the content/words. The petitioner maintained same question, substance, and NEON/THCP did not get prejudice while the petitioner maintained the size of the content/words to be within the rules.

Trustee cum attorney Fitzsimmons evaded the constitutional violation discussion through an effort to confuse the court by twisting the facts against petitioner. *In Liljeberg v. Health Services Acquisition Corp.*, 486 U.S.

847 (1988), this honorable court affirmed the Appeal court decision to reverse the trial court order and in effect affirmed vacating a trial court judgment or to disqualify a judge pursuant to 28 U. S. C. § 455, where the presiding judge is a trustee of an interested corporation. In the instant case, Mr. Matthew Fitzsimmons is a Board of trustee for NEON, a hostile company to takeover THCP, as detailed in the certiorari. The Court of Appeals noted that Judge Collins should have immediately disqualified himself when his actual knowledge of Loyola's interest was renewed and as further noted that regardless of Judge Collins' actual knowledge, "a reasonable observer would expect that Judge Collins would remember that Loyola had some dealings with Liljeberg and St. Jude and seek to ascertain the nature of these dealings. *In Liljeberg v. Health Services Acquisition Corp.*, 796 F.2d 796, 803 (1986). Though statutes and disciplinary rules mandates the disclosure of attorney conflicts and disqualification, similar to the judge disqualification, Mr. Fitzsimmons continued to have an active interest with severe conflicts and constitutional violations in an effort to have continued control of THCP, see certiorari and appendixes. With so many violations of Mr. Fitzsimmons, his representation of NEON/THCP under Sixth Amendment does not have support either.

7 By letting Mr. Matthew Fitzsimmons to represent THCP/NEON instead of disqualifying him, the court's error violated petitioner's as well as THCP's and NEON's Sixth Amendment right to counsel of choice by self imposing as an attorney by a trustee with his pecuniary interests ahead. The trustee cum attorney Fitzsimmons' representation with so many conflicts but to serve his pecuniary benefits is in "complete" violation as Mr. Fitzsimmons was ineffective within the meaning of *Strickland v. Washington*, 466 U. S. 668, 691-696(1984). I.e., that his performance was deficient and the Petitioner and THCP/NEON are prejudiced by it – and or the

petitioner can demonstrate that any other counsel's representation without pecuniary benefits would have created with a "reasonable probability that ... the result ... would have been different, truth would have come out rather than concealing the facts and rather harming the judiciary system and the victims. This court and the constitution attempted to protect the parties through due process and amendments but this is a new situation where trustee cum attorney Mr. Fitzsimmons misusing the Sixth Amendment under the name of NEON/THCP clients by imposing his choice with his pecuniary interests and conflicts to create prejudice rather than the clients' choice. The right to counsel is accorded to ensure that the party receives a fair proceeding/trial, *Mickens v. Taylor*, 535 U. S. 162, 166 (2002), and the proceedings in the instant case are unfair as the petitioner and THCP/NEON's defendant are prejudiced. Moreover, the right to counsel of choice commands not that a trial/proceeding is fair, but that a particular guarantee of fairness is provided -- that the counsel he believes to be best defends the party. *Crawford v. Washington*, 541 U. S. 36, 61 (2004). With self-serving and pecuniary benefits, while creating different case numbers, trustee cum attorney Fitzsimmons continued representation and same pattern and in the opposition BRIEF pretended as if each motion or each case number is a different one thus Res Judicata, collateral review effects. In a continued pattern, with same parties as detailed in the certiorari/appendixes, the right was violated here for THCP/NEON and using THCP/NEON for the self-serving purposes, effected the petitioner's representing rights and perhaps; no additional showing of prejudice is required to make the violation "complete." No one represented THCP interest's fairly thus violated Sixth Amendment right of THCP when attorney Matthew Fitzsimmons pretending to be representing THCP and unfortunately the court even failed to conduct a hearing to investigate the facts.

The trustee cum attorney Fitzsimmons should not be counting on how many courts he evaded the facts, but he should start addressing what right he had to continue violate the constitution, Disciplinary rules, and how he can violate the constitution as detailed the facts in the certiorari/appendixes. The Sixth Amendment provides that " the defendants shall enjoy the right ... to have the Assistance of Counsel for his defense, *Wheat v. United States*, 486 U. S. 153, 159 (1988), *Powell v. Alabama*, 287 U. S. 45, 53 (1932) and not an attorney cum trustee Fitzsimmons choosing whom to represent. Mr. Fitzsimmons certainly here agrees, that "the Sixth Amendment guarantees the defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, Mr. Fitzsimmons does not dispute the fact that the Court erroneously deprived respondent-THCP/NEON of their counsel of choice, and by controlling those corporations declared himself as an attorney and mischaracterize the facts with severe conflicts and continue to harm society, purported THCP/NEON clients, and the petitioner. While the constitution including the Sixth Amendment protects the parties, the statutes and Disciplinary rules should protect the constitution/amendments from the self-serving attorneys. An innocent victim such as petitioner should be protected from such attorneys and trustee cum attorneys should not hide under the name of purported clients such as THCP/NEON.

The Sixth Amendment supported a right to counsel of choice of NEON/THCP and the Constitution guaranteed a fair trial through Due Process Clauses including to the Petitioner. In sum, the right at stake here is both the right to counsel of choice of THCP/NEON, and the right to a fair trial/proceedings of the Petitioner; and violations also occurred through prejudice and the violation "complete." *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006) Trustee cum attorney Fitzsimmons'

representation of THCP/NEON by pretending as if he is representing the clients but to serve his pecuniary benefit is like the trial court violating THCP/NEON's Sixth Amendment right to counsel of choice. Letting Mr. Fitzsimmons to continue without disqualifying him caused the "trial/procedural/ constitutional errors" and "structural defects." *Arizona v. Fulminante*, 499 U. S. 279 (1991) and all the effects/violations are preserved for review.

The trustee cum attorney Fitzsimmons concedes that the courts erred when it denied petitioner's request to disqualify Mr. Fitzsimmons as Mr. Fitzsimmons is not NEON/THCP's choice of counsel, rather Mr. Fitzsimmons chose to represent NEON/THCP by controlling them and for his self-serve purposes. Both the affirming decision and the dissenting opinions of *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006), supports the fact that the instant case violates THCP/NEON respondent's Sixth Amendment right to counsel of choice. The language of the Sixth Amendment supports that the Assistance of Counsel Clause focuses on what a defendant is entitled to receive ("Assistance"), rather than a self-serving trustee, Matthew Fitzsimmons, controlling a party and representing with self-serving interests. The right to counsel of choice is also limited by conflict- of-interest rules. Even if a defendant is aware that his or her attorney of choice has a conflict, and even if the defendant is eager to waive any objection, the defendant has no constitutional right to be represented by that attorney. *Wheat v. United States*, 486 U. S. 153, 159 (1988), *Morris v. Slappy*, 461 U. S. 1, 14 (1983).

The current judgments against victim/Petitioner does not support RC 2323.51 and or RC 2323.52 and it is very unfortunate that the pecuniary benefit involved attorney able to get a judgment from the appeal court in contrary to his own violations of constitution and statutes. As detailed in Certiorari, Victim/petitioner's Due process

rights were violated, where expected the protection and assistance, by punishing rather than rewarding for the sacrifice and for the good faith effort, both by Appeal court and further punishment by Ohio Supreme court. As the MLHOA case was repeatedly cited by Mr. Fitzsimmons, in that the Ohio RC 5311.18 superceding US Federal bankruptcy laws, or alternatively, Ohio state court of last resort did not interfere to avoid conflicts between state statute/court decisions against federal supremacy laws. A state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. This case deserves appropriate treatment as one of the great importance of public interest and involved with substantial constitutional issue, Due process violations, prejudice, and constitutional amendment violations. With a good faith Petitioner brought to the court's attention for justice, Attorney Fitzsimmons should not be rewarded for wrongdoing with bill/sanctions against Petitioner, and judgments should be in Petitioner's favor.

Petitioner had meritorious claim, with half-truths and in violation of dozens of Disciplinary rules and pertinent laws Attorney who is a Board of Trustee caused tortious interference, ousted Petitioner even whom represented in the past, caused victim in the process, and continue to cause damages by repeatedly filing with half-truths.

III. Conclusion:

The certiorari is nothing to do with the condominium case other than to the extent Mr. Fitzsimmons cited it to divert the facts and effected the facts. As the record and the certiorari evidences, trustee cum attorney Fitzsimmons could not deny his material misrepresentation, Constitution violation, and severe conflicts, which also affected the constitution. The Certiorari should be granted and Trustee cum attorney should not cause irreparable harm to the petitioner, to the

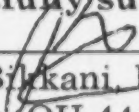
constitution, to the judiciary system, and to his purported clients THCP/NEON. Some of the issues were listed in Certiorari. Attorney Fitzsimmons/ Board member severely violated Disciplinary Rules and Fiduciary duties for over a dozen defendants in the instant case and to Petitioner as all are his clients/ex-clients/ or express attorney-client relation, thus strict standards of Canon 5 is applicable and he did not deny this on his opposition BRIEF. Mr. Fitzsimmons has been privy to THCP, NEON, Dr. Marshall, Mr. Kimber, Mr. Lee, Mr. Scheur, Ms. Aaron, SMG, Mr. McMillan, Ms. Phelps, Mr. Pinkney, Mr. Davis, and Petitioner's; confidences, thus violation under Canon 4 and Mr. Fitzsimmons should have been disqualified from representing the defendants in the instant case. The Canon 4 of the Ohio Code of Professional Responsibility imposes a duty on Matthew Fitzsimmons, and on Dennis Roth to protect THCP's, Petitioner's, THCP Board of Trustees, NEON's, and SMG defendants as all of them have privy with them confidences and secrets including to related to Petitioner's wrongful termination claim, *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, (2005); DR 4-101(A); *Kala v. Aluminum Smelting & Refining Co., Inc.* (1998), 81 Ohio St.3d 1. Using the direction in Disciplinary Rule 5-105(D) and by Canon 9's warning that "A Lawyer Should Avoid Even the Appearance of Professional Impropriety" Mr. Fitzsimmons getting violated in all aspects.

The legal profession demands adherence to the highest standards of honesty and integrity. Mr. Fitzsimmons created victim, submitted materially false affidavit to court, and had many violations including deliberately withholding that which by law they were required to reveal.

The trustee cum attorney Fitzsimmons unfortunately, submitted materially false affidavit to the court in September 2005 itself in the instant case, blocked

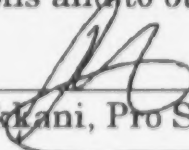
deposition from whom Mr. Fitzsimmons submitted affidavit by preparing it, by representing co-trustee MT Miller blocked his deposition for Mr. Fitzsimmons' advantage; and being personally involved, representing multiple parties. **Trustee cum attorney Fitzsimmons is a party in the instant case by personally got served, and involved personally and operationally as described in the certiorari.** Attorneys indefinitely suspended in the similar or lesser cases where an attorney repeatedly neglected multiple clients, made false statements and or acted dishonestly. Irrespective of through how many cases and how many state courts the trustee cum attorney Fitzsimmons can evade the due process and constitution rights, the violations undermined the judiciary process. This honorable court preserved the judiciary system even in a case where a judge did not recall the potential conflicts and denied multiple disqualification motions, *In Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988). In the instant case not only severe constitution violating attorney Fitzsimmons intentionally and continuously violating but cashing in with multiple cases and with continued victimization and it should not prevail without this honorable court's review to serve justice.

Respectfully submitted,


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IV. Certificate of Service

A copy of the foregoing mailed on March 16, 2009 to respondents NEON/THCP 3 copies % Matthew Fitzsimmons, and a separate copy to Matthew Fitzsimmons and to others including to Attorney Kevin Breen.


Prasad Bikkani, Pro Se